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April 27, 2010

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 12, 2009

Case Number: TSO-0850

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the individual should not be granted a security clearance at this time.<sup>2</sup>

## **I. BACKGROUND**

The individual is employed by a Department of Energy (DOE) contractor, and was issued a security clearance in connection with that employment. Based on the individual's lengthy history of financial difficulties, including collection accounts, property in foreclosure, unpaid child support and taxes, and a 1993 Chapter 13 bankruptcy, his security clearance was suspended in 2008. His case was then placed in administrative review in order to provide the individual an opportunity to address the DOE's serious concerns regarding his continued eligibility for access authorization. In January 2009, after his clearance was suspended, the individual filed a Chapter 7 bankruptcy petition. In March 2009, DOE security received a termination statement submitted on the individual's behalf. Subsequently, the individual's employer informed the DOE that the termination statement was

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<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

submitted in error, that the individual was still employed, and that he was on “administrative leave.” The individual was then required to apply for reinstatement of his clearance in order for the administrative review process to continue.

He did so, and in a letter dated September 30, 2009, hereinafter referred to as “the Notification Letter,” DOE security informed the individual of its concerns regarding his eligibility for access authorization and the reasons for those concerns. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for a security clearance. The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 24 exhibits into the record of this proceeding. The individual introduced seven exhibits, and presented the testimony of his former union representative, two former co-workers, and his wife, in addition to testifying himself.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual’s eligibility to hold a clearance. This information pertains to paragraph (I) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under Criterion (I), information is derogatory if it indicates that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interest of the national security. Under this criterion, the Letter cites the individual’s lengthy history of severe financial difficulties, and his statements in numerous Personnel Security Interviews (PSIs) and Letters of Interrogatory (LOIs) concerning those difficulties.

In a PSI conducted on April 15, 1992, the individual acknowledged that he had two collection accounts, three delinquent accounts, a foreclosure, and a garnishment of his wages for child support. He admitted that he bought whatever he wanted, and that his problems were the result of bad money management. He said that his wife was responsible for handling their finances, and he indicated that he would not need to file for bankruptcy because in the future, he would pay his debts on time.

In a PSI conducted on May 4, 1993, the individual admitted that a lien for non-payment of taxes was placed against him by a state in which he used to reside in the amount of \$434.87. He also admitted to still having two delinquent accounts and two collection accounts. He again stated that his wife handled their finances, and blamed her for the lien having been placed against them. The individual was informed of the DOE’s security concerns involving financial irresponsibility and that such behavior could jeopardize his security clearance. The individual represented that he was attempting to put his financial affairs in order.

In 1993, the individual filed for bankruptcy under Chapter 13 of the federal bankruptcy laws. According to the Notification Letter, following the bankruptcy, he accumulated five more unpaid collection accounts totaling \$1,243 and five delinquent accounts totaling \$5,805. In his June 17, 1998, response to an LOI, the individual stated that he was not aware of three unpaid collection accounts because his wife was responsible for not paying the bills.

In a PSI conducted on June 22, 2000, the individual admitted owing the IRS approximately \$8,000, having three unpaid collection accounts totaling \$1,140, and delinquent child support payments in the amount of \$530. He again blamed his wife for the couple's financial problems. However, he acknowledged the DOE's concerns regarding financial irresponsibility, and stated his intention to pay off his debts, not incur further debts, and to handle the couple's finances in the future.

During a June 11, 2001, PSI, the individual stated that he owed the IRS approximately \$10,000 for 1998 back taxes, had two unpaid collection accounts totaling \$1,085, and delinquent accounts totaling \$520. He persisted in blaming his spouse for these problems.

Despite having previously told the DOE that he was going to take over his family's finances, during his October 14, 2008, PSI, the individual continued to blame his wife for the couple's ongoing financial problems. He admitted, though, that he was lazy with his finances and did not check the mail for bills. He further admitted to having had two collection accounts totaling \$262, a delinquent account in the amount of \$2,326, another lien for non-payment of state taxes, and to having another foreclosure proceeding initiated against him for non-payment of his mortgage. Finally, after his clearance was suspended because of these financial problems, on January 7, 2009, the individual filed for bankruptcy under Chapter 7 of the federal bankruptcy laws for the amount of \$165,639.25.

At the hearing, the individual did not deny having incurred these debts, or that they had, at one time, been delinquent. He testified, however, that some of them had been paid off at the time of the PSIs during which they were discussed. Hearing Transcript (Tr.) at 88-92. This derogatory information amply justifies the DOE's invocation of criterion (I), and raises significant security concerns. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline F.*

### **III. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and

maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

## **IV. FINDINGS OF FACT AND ANALYSIS**

### **A. Mitigating Evidence**

The testimony and other evidence presented at the hearing establishes that the individual has generally behaved in a financially responsible manner since his January 2009 Chapter 7 bankruptcy, a period of approximately one year as of the date of the hearing. The individual’s wife testified that most of their bills are now paid automatically from her husband’s checking account. The only payments that are not made in this manner are those for their still-overdue federal and state taxes, and for their mortgage. Tr. at 59-60. Although she used to handle all of their finances, she said, now they handle them together. Tr. at 61.

The individual’s wife also discussed their January 2009 bankruptcy. She stated that they declared bankruptcy after the individual lost his job when his clearance was suspended in the latter part of 2008. Although most of their debts were discharged in the bankruptcy, she estimated their current total debt at “less than \$200,000,” including their mortgage. Tr. at 67. The couple also took some money management classes. These courses helped them to formulate a budget and to distinguish between necessities and things that they could do without. *Id.* The individual’s wife further testified that, after formulating their budget, they realized that their monthly income exceeded their monthly expenses (not including groceries, gasoline, and incidental expenses) by approximately \$2,100. Tr. at 68-70. She estimated that they spend between four and six hundred dollars per month on groceries and gasoline, and she said of the remaining money that “usually he keeps it or I keep it.” Tr. at 71-72. She added that they do have a savings account, but that it doesn’t have any money in it, and that they do not have an emergency fund. Tr. at 72, 79. They do not have any bills that are currently overdue, she stated, nor do they currently have any accounts that have been referred to a collection agency. Tr. at 73. The two of them have agreed that they will no longer make major purchases without discussing it with the other spouse. Another difference between their behavior now and in the past, the individual’s wife testified, is that the individual now realizes that he cannot “just go out and buy things” without considering how it would affect their finances. Tr. at 80. She concluded that she is no longer concerned about their ability to meet their financial obligations. *Id.*

The individual testified that, in addition to the money management courses, he and his wife read books on financial planning, and that this is where they got the ideas to have their bills paid automatically and to formulate a budget. Tr. at 83. What got the two of them in trouble, he added, was his belief that he could get anything that he wanted, whether he had the money or not, and then work “four or five days” of overtime to pay for it. *Id.*

The individual then talked about his tax problems. He said that he has “always” had tax problems because he has not had a sufficient amount withheld from his paycheck. Tr. at 92. He still owes approximately \$33,000 in unpaid federal taxes, which he is paying off at the rate of \$521 per month, and an unspecified amount of state taxes, for which he is making monthly payments of \$200. Tr. at 92-93. He testified that it did not occur to him, until recently, to change his deductions so that a sufficient amount of money could be withheld from his pay to satisfy his tax obligations. That change has now been made. Tr. at 94.

Next, the individual testified about his mortgage. He stated that he was in the process of negotiating a loan modification with his previous mortgage holder when the note was sold. During the process of negotiating a modification with his previous lender and then with the new mortgage holder, the individual said, he was instructed to withhold his mortgage payments. Tr. at 74. Consequently, as of the date of the hearing, he had not made a mortgage payment since October 2008. Tr. at 100. He was further informed that the missed payments would be added to the end of the term of the loan. *Id.* However, because he was able to find a job after his clearance was suspended and his previous employment terminated, the loan modification will not take place, and he has been instructed to resume making his mortgage payments in February 2010. Tr. at 74. The individual is confident that he will be able to make his house payments in a timely manner, and meet his other financial obligations. Tr. at 96.

The individual then discussed other issues relating to his current and past finances. He stated that he is up to date on all of his payments. Tr. at 111. He previously got into trouble meeting his financial obligations because he knew that, in his prior job, he could miss some payments and then work enough overtime to bring any delinquent accounts current. Tr. at 112. In contrast to his earlier statements, he admitted that he, and not his wife, was primarily responsible for his financial troubles. Tr. at 114. Because of this realization and the measures that he and his wife have instituted, his financial situation is the best that it has ever been, and this Administrative Review process has been just the “wake-up call” he needed to get his affairs in order. Tr. at 114-115. He further stated that he will continue having his bills paid automatically, and that he will continue to desist from the kind of “spur of the moment” purchases that got him in trouble in the past. Tr. at 115. Finally, he discussed the difference in salary between his current position and the one that he lost when his clearance was suspended. Despite making approximately \$1,600 per month less now than previously, he testified that he should be able to continue to meet his financial obligations. Tr. at 128-129.

## **B. Analysis**

As admirable as the measures now instituted by the individual and his wife are, I do not believe that one year of generally-responsible financial behavior is sufficient to compensate for the individual’s history of financial irresponsibility over at least 18, and perhaps as many as 25 years. DOE Ex. 3 at

3. In seven PSIs and two LOIs over the past 18 years, the individual described a pattern of poor financial practices, including spending money before he had earned it, failing to budget properly, inattention to the couple's responsibility to pay bills in a timely fashion, and failing to have a sufficient amount withheld from the individual's salary for tax purposes. These practices have led to two bankruptcies, two foreclosure proceedings, delinquent child support, unpaid federal and state taxes, and numerous delinquent and collection accounts. The individual testified that this Administrative Review proceeding has served as a "wake up call," and that he will continue to behave in a responsible manner with regard to money. Yet, during many of the PSIs, he was informed of the DOE's specific security concerns regarding financial irresponsibility, and he promised to develop more sound financial habits. He and his wife even took a financial management course after their first bankruptcy in 1993. DOE Ex. 21 at 20. However, despite these warnings, his repeated assurances, and this course, he continued to engage in financially irresponsible behavior. Given his lengthy pattern of poor money management, 12 months of generally-sound financial behavior is insufficient to convince me that the chances of a return to his previous behavior are acceptably low.

Furthermore, although the individual's money management has improved markedly, there are still some aspects of his financial situation that are cause for concern. First, the individual is still in a substantial amount of debt, owing approximately \$33,000 in unpaid federal taxes as of the date of the hearing, and an undetermined amount of state taxes. Second, although the individual and his wife testified that since the latest bankruptcy, their monthly income has exceeded their monthly expenses by an average of at least \$2,000 (largely due to not having had to pay a house note), they could not clearly explain what happened to these excess funds. Tr. at 68-72;102-112. What is clear, however, is that the money has not been used to fund a savings account or to create an emergency fund. Tr. at 79. Finally, I am concerned that the individual's new-found fiscal restraint may partly be a product of his current, less lucrative employment. I am left to wonder whether the higher pay that could come with a security clearance might lead to a return to the previous pattern of irresponsible behavior. For the reasons discussed above, I find that the individual has not adequately addressed the DOE's security concerns under criterion (1).

## **V. CONCLUSION**

After carefully considering all of the evidence in the record as outlined above, I conclude that the individual has not demonstrated that granting him access authorization would not endanger the common defense and security, and would be clearly consistent with the national interest. Accordingly, I find that the individual should not be granted a security clearance at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Senior Hearing Officer  
Office of Hearings and Appeals

Date: April 27, 2010